

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision: Housing (Scotland) Act 2014 Section 48 and the First-tier Tribunal for Scotland Procedure Regulations 2017 Rule 26

Chamber Ref: FTS/HPC/LA/18/1389

The Parties:-

**Mr Thomas Latta and Mrs Helen Latta, 2 Reen Place, Bothwell, G71 8HB
("the Applicants")**

Letting Hamilton Limited trading as Location Estate Agents, incorporated in Scotland under the Companies Act (registered number SC507543), 83-87 Cadzow Street, Hamilton, ML3 6DY ("the Letting Agent and Respondent")

Tribunal Members:-

Patricia Anne Pryce	-	Chairing and Legal Member
Elizabeth Dickson	-	Ordinary Member (Housing)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Letting Agent has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 ("the 2014 Act"), determines unanimously that, in relation to the present Application, the Letting Agent has not complied with the Code of Practice and determined to issue a Letting Agent Enforcement Order ("LAEO").

The tribunal makes the following findings in fact:

- The Applicants are the owners and Landlords of the property at 15 Cairnwell Gardens, Motherwell.
- The property was let by the Respondent, on behalf of the Applicants, who acted in its capacity as a Letting Agent.

- £575 per calendar month was due by way of rent for the property.
- The Tenant of the property paid to the Respondent £575 by way of a deposit for the property.
- The Applicants have not received return of the deposit from the Respondent.
- The Applicants have not received the rental payments of £575 for each of the months of April and May 2018 from the Respondent which the Respondent had received from the Tenant.

The tribunal makes the following finding in law:

- The Respondent is a relevant letting agent to whom the Code applies from 31 January 2018.

Following on from the Applicant's application to the First-tier Tribunal (Housing and Property Chamber), which comprised documents received between 12 and 22 June, both 2018, the Legal Member with delegated powers of the Chamber President referred the application to a tribunal on 2 July 2018.

Introduction

The tribunal had available to it and gave consideration to: the Application by the Applicants as referred to above and oral submissions made by the Applicants at the hearing. The Respondent did not lodge any representations with the tribunal.

Although the present application had been conjoined with the application by another Applicant under Reference number FTS/HPC/LA/18/1579, the tribunal decided to hear both applications separately and issue separate decisions in respect of the applications as the applications proceeded on different grounds.

The Legal Basis of the Complaints

The Applicant complains under reference to Sections 17, 21, 32 (p), 65, 66, 110, 112, 118 to 125 (inclusive) of the Code which are referred to for their terms.

Hearing

A hearing took place in the Glasgow Tribunal Centre, 20 York Street, Glasgow on 1 October 2018.

The Applicants attended on their own behalf.

The Respondent was not in attendance nor was it represented.

Preliminary Issues:-

The tribunal decided that the terms of Rule 29 had been complied with and that the hearing could continue in the absence of the Respondent. The tribunal was content that the Respondent had been given sufficient time and notice of the proceedings and hearing.

Section 17

The Applicants submitted that the Respondent had not been open and honest when dealing with them. The Respondent took the deposit of £575 from the Tenant, thereafter advised the Tenant that the deposit had been lodge with My Deposit Scotland and provided the Tenant with a registration number for this deposit. However, when the Tenant checked this, the registration number was made up. The scheme confirmed that the deposit had not been lodged. The Applicants submitted that they never received return of this deposit from the Respondent. In addition, when a new Tenant came into their property, they had to pay out £575 of their own money in to a deposit scheme to ensure that they met with their legal obligations.

Given this, the tribunal finds that the Respondent failed to comply with Section 17 of the Code.

Section 21

The Applicants referred to their application and submitted that the Respondent had failed to carry out its services in a timely and reasonable way. In particular, the Respondent failed to lodge the deposit in time and failed to pay over to the Applicants the rental payments due for the months of April and May 2018. These remain outstanding and owing to the Applicants. This was made worse by the fact that the Tenant paid the rent by standing order, was never late and never missed a rental payment. In short, Mr Stenhouse, despite being asked on several occasions by the Applicants to account for this money, failed to pay over the sums due.

The tribunal noted that these amounts have been outstanding for some months.

Given the foregoing, the tribunal finds that the Respondent failed to comply with Section 21 of the Code.

Section 32 (p)

The Applicants referred to the terms of their application and further submitted that the Respondent breached this part of the Code by failing to provide them with details of any insurance when asked for this and when they asked the Respondent, in particular, Mr Stenhouse, for details of how their money was kept safe.

The tribunal accepted the Applicants' position on this matter. The Respondent had not provided any submissions to the tribunal to dispute any of the matters raised by the Applicants.

Given this, the tribunal finds that the Respondent failed to comply with Section 32 (p) of the Code.

Sections 65 and 66

The Applicants submitted that the Respondent had failed to advise them of the statutory requirements in respect of lodging deposits. In addition, the Respondent had then failed to lodge the deposit paid to it by the Tenant.

The Applicants submitted that they only became aware of the need to lodge a deposit in an approved scheme when they contacted their local Trading Standards department for assistance and advice. In addition, their new Letting Agent had advised them that they needed to lodge deposits in an approved scheme.

Given this above, the tribunal finds that the Respondent failed to comply with Sections 65 and 66 of the Code.

Section 110

The Applicants submitted that the Respondent never made them aware of the Code. In addition, the Respondent never provided them with a copy of the Code. The Applicants only became aware of the Code through Trading Standards and their new Letting Agent.

Given this, the tribunal finds that the Respondent failed to comply with Section 110 of the Code.

Section 112

The Applicants submitted that their written terms and conditions which they received from the Respondent did not contain any details about making complaints. Despite trying to make complaints to the Respondent, they were not told how they should go about this.

Given this, the tribunal finds that the Respondent failed to comply with Section 112 of the Code.

Sections 118,119, 120, 121, 122, 123, 124 and 125

The Applicants were content to deal with these Sections of the Code together as they all related to how the Respondent dealt with the Applicants' money. The Applicants submitted that they had asked for details of how the Respondent kept their money safely and separate from the Respondent's business funds. When they

spoke to Mr Stenhouse of the Respondent, he had assured them that the client funds were kept separately. However, Mr Stenhouse also submitted that there would be no issue repaying the monies due to his clients once he sold the estate agency part of his business. This greatly concerned the Applicants as it became apparent that their monies were not being maintained separately. In short, they submitted that the Respondent did not have robust and transparent procedures for handling their money. In addition, the Respondent could not produce records or accounts in respect of this money. Mr Stenhouse, despite being asked to return monies which had been paid by Tenants, could not account immediately to the Applicants for this. Given that Mr Stenhouse had advised them that he would be able to repay the money he owed them once he sold a part of his business, the Applicants submitted that Mr Stenhouse, who was the main face and responsible officer of the Respondent, could not have been keeping the client's money separately. The Respondent did not provide the Applicants with confirmation from a bank or building society that their money was being held separately, they were never provided with monthly transactions reconciling their money, their money was not made available to them at their request (and despite repeated requests). Finally, despite their contractual relationship having come to an end, the Respondent had held onto the money that it was due to pay back to the Applicants.

Given this, the tribunal finds that the Respondent failed to comply with Sections 118, 119, 120, 121, 122, 123, 124 and 125 of the Code.

Compensation

The tribunal invited parties to address it on the issue of compensation which the Applicant sought.

The Applicants submitted that they were due the deposit of £575, two monthly rental payments of £575 per month together with the balance of £57 due from a previous tenancy.

The tribunal considered these submissions in respect of compensation and in light of Section 48 of the 2014 Act. The tribunal noted that monies remain due and resting owing to the Applicants by the Respondent.

In light of the foregoing, the tribunal finds that the sum of £1,782 is an appropriate sum by way of compensation.

In addition, the tribunal noted that the Applicants had advised that there are a number of landlords in a similar position who are owed monies due by the Respondent, in particular, through their intromissions with Mr Kenneth Stenhouse. This is of grave concern to the tribunal as it appears to the tribunal that there may have been a course of conduct which could be fraudulent in nature, a matter which no doubt Police Scotland and prosecuting authorities may wish to consider in greater depth.

In light of its findings, the tribunal requires the Letting Agent to:-

Within 28 days of the date of communication to the Respondent of the letting agent enforcement order, the Respondent must:-

1. Pay to the Applicants the sum of £1,782.
2. Provide documentary evidence to the tribunal of the Respondent's compliance with the above Letting Agent Enforcement Order by sending such evidence to the office of the First-tier Tribunal (Housing and Property Chamber) by recorded delivery post.

The Respondent should note that failure to comply with an LAEO may constitute a criminal offence.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

P Pryce
.....

Legal Member and Chair

1 October 2018
.....

Date